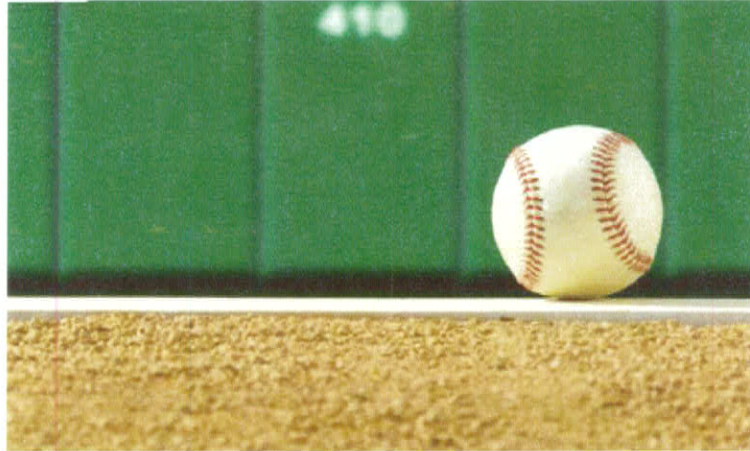


Majority "Baseball Rule" Limits Spectator Liability

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May 1, 2013, Department, by James C. Kozlowski, J.D., Ph.D.



As described herein, the "Baseball Rule" has been adopted by courts in a majority of jurisdictions that have considered the legal duty of landowners owed to spectators at baseball games. In general, the Baseball Rule limits the landowner duty of care owed to spectators to providing reasonable protection in the form of screening behind home plate. Spectators who choose to view the game in an unscreened area assume the open and obvious risk of being struck by balls entering the stands in the ordinary course of play, including pregame.

As a practical matter, in clearly delineating and limiting the landowner's legal duty, the Baseball Rule avoids creating a potential lawsuit for every ball entering the stands and striking a spectator. Absent the Baseball Rule, under general principles of landowner liability for negligence, each spectator injury would have to be considered on a case-by-case basis based upon the particular circumstances of a particular game in each stadium setting. Accordingly, the Baseball Rule avoids a flood of litigation by increasing the likelihood that a spectator lawsuit will be dismissed prior to trial on a motion for summary judgment.

If general landowner principles governing landowner liability for negligence were applicable, spectator lawsuits would be more likely to proceed to trial wherein a jury will consider whether or not the landowner exercised reasonable care under the circumstances. Critics of the Baseball Rule question why the owners and occupiers of ballfields should enjoy a judicially created exception that creates a limited duty to general principles of landowner liability. As noted below, the legislatures in several jurisdictions have enacted a statute that has effectively adopted a version of the Baseball Rule, particularly when courts have refused to do so.

While many of the court opinions applying the Baseball Rule have involved professional baseball facilities, the principles and reasoning of the Baseball Rule have been applied to all levels of competition. The Baseball Rule effectively limits the landowner duty to providing protective screening only where the obvious yet unavoidable risk of injury is greatest, i.e., the "zone of danger" behind home plate. Courts have applied similar principles and extended this "zone of danger" reasoning to other sports, e.g., hockey, where the "zone of danger" is behind each goal. (See: "Hockey Puck Facial A Foreseeable Risk For Spectators?").

Eye on the Ball

In the case of *Martinez v. Houston McLane Company*, 2013 Tex. App. Lexis 2420 (Tex. App. 3/12/2013), plaintiff Shirley Martinez was struck in the face by a batting practice home run ball prior to a Houston Astros home game at Minute Maid Park. Martinez was using a game ticket donated by the Astros for members of the Texas National Guard and their families. The donated seats in the bleacher section behind the right field wall were not protected by any screening. Martinez had not requested a protected seat. The Astros did not provide any map, diagram or other information to identify seating areas that were protected or unprotected by screens. Minute Maid Park did, however, provide 5,000 seats protected by a screen behind home plate in a stadium with a capacity of 41,000.

At the time of the incident, Martinez was descending the stairs to her seat with a child in a stroller. Martinez was informed by an usher that she could not take the stroller to her seat. In response, Martinez ascended the stairs with the child and stroller to take the stroller to a designated storage area. While her attention was focused on climbing the stairs, her back was to the batting practice on the playing field. Upon hearing someone yell a warning that a fly ball was coming toward her, Martinez shielded the child with her arms and was struck in the face by the ball. Martinez sustained an orbital fracture and corneal laceration.

Martinez sued the Astros for negligence. The trial court granted summary judgment in favor of the Astros, effectively dismissing the lawsuit. Martinez appealed.

As noted by the appeals court, Texas courts had refused to "impose a duty on stadium owners to screen all seats or to warn about foul balls." Instead, the court found "a stadium owner owes only a limited duty to spectators to protect them from baseballs hit into the stands." Specifically, under the Baseball Rule, the court held "the stadium owner must provide 'adequately screened seats' for all those who wish to sit behind a screen."

On appeal, Martinez asked the appeals court to abolish the traditional Baseball Rule. As characterized by Martinez, the Baseball Rule provided an "undeserved shield to stadium owners" which did not reflect "the realities of baseball in the modern era." In so doing, Martinez claimed "the stadium owners' limited duty is an outgrowth of the old, discarded, assumption-of-the-risk rule."

Traditionally, assumption of risk is an affirmative defense which precludes liability for ordinary negligence. Assumption of risk is a voluntary encounter with a known danger. In effect, participants are deemed to have consented and, therefore, to have assumed the open and obvious and/or inherent risks in an activity, including being struck by foul balls in the unprotected areas of baseball stadiums.

A number of jurisdictions, including Texas, have adopted comparative negligence statutes. Under comparative negligence, the negligence of the defendant is compared to any negligence on the part of the plaintiff that led to the injury. Accordingly, under some comparative negligence statutes, the plaintiff's assumption of risk is no longer an automatic bar to recovery for the defendant's negligence. Rather, the plaintiff's voluntary encounter with a known danger is simply a factor to be weighed against the defendant's negligence when a jury determines the proportion of fault to be assigned to each party under an applicable comparative negligence statute.

In this particular instance, Martinez argued assumption of risk under the Baseball Rule was "outdated" because the Texas "comparative negligence scheme is well-equipped to examine the actions and inactions of all parties in determining each party's level of culpability." If so, Martinez was more likely to have her case proceed to trial for consideration by a jury, as opposed to having it summarily dismissed on the basis of assumption of risk. The appeals court rejected this argument.

As noted by the appeals court, other courts have also held that "the Baseball Rule has a sound basis despite the abolition of the assumption-of-the-risk doctrine" in jurisdictions with comparative negligence statutes. Specifically, the court found the "limited-duty doctrine" under the Baseball Rule establishes "the outer limits of liability and allows the stadium owner to fulfill its duty of care as a matter of law."

[T]he Baseball Rule establishes a fact-specific standard of care for injuries caused by errant balls at baseball stadiums by accounting for the open and obvious nature of the risk that batted balls pose to fans.

As cited by the appeals court, the Baseball Rule in Texas reflected the "majority rule" that "continues to be applied by courts across the country in the last 12 years." Moreover, the court cited published court opinions issued before 2000 that had adopted the limited-duty Baseball Rule in the following jurisdictions: California, Louisiana, Minnesota, Missouri, New York, North Carolina, Ohio, Utah and Washington. Since 2000, the appeals court found courts in the following jurisdictions had adopted the Baseball Rule: Michigan, New Jersey, Nevada, New Mexico and Virginia.

Similarly, the court found the Illinois legislature had adopted the "Baseball Facility Liability Act" (745 ILCS 38/1 et seq.) to effectively "overrule two cases that had created liability for stadium owners for injuries caused by batted balls." In so doing, the purpose of this Illinois statute was to "shift expense for such injuries to spectators, unless injury is caused by the owner's willful and wanton conduct" (unlike mere carelessness, which would constitute ordinary negligence, willful and wanton conduct requires outrageous behavior indicative of an utter disregard for the physical well-being of others).

While noting that "[t]he limited-duty rule was first recognized almost 90 years ago in *Edling v. Kansas City Baseball & Exhibition Co.*, 168 S.W. 908 (Mo. Ct. App. 1914), the appeals court acknowledged that the Baseball Rule is "not without its critics," including the Idaho state supreme court opinion described below, *Rountree v. Boise Baseball, LLC*, 2013 Ida. LEXIS 55 (Idaho 2/22/2013).

Under the Baseball Rule, the appeals court further noted that courts in other jurisdictions have specifically held that "the stadium owner's duty includes providing a net behind home plate":

[The] sports venue owner or operator that provides screened seating (1) sufficient for those spectators who may reasonably anticipated to desire protected seats on an ordinary occasion, and (2) in the most dangerous section of the stands, has satisfied its duty of care to those spectators...

[The] baseball rule prevents liability if there are a sufficient number of protected seats behind home plate to meet the ordinary demand for that kind of seating. If that seating is provided, the baseball stadium owner has fulfilled its duty and there can be no liability for spectators who are injured by a projectile from the field.

As characterized by the appeals court, the Baseball Rule was consistent with "public policy considerations that strike a balance among multiple interests and presumptions about attendance at a baseball game."

First, there is the interest of fans who desire the intimate feeling from sitting as close to the action as possible with the possibility of snagging a ball. Second, there is the interest of fans who want protection from injury due to wayward balls. Third, the risk of injury from a ball is considered an inherent risk of the game. Fourth, most fans who attend the games are aware that objects may leave the playing field with the potential to cause injury...

While requiring that protected seats be provided for those who want them, the limited-duty rule leaves the baseball stadium owner free, without fear of liability, to accommodate the majority of fans who prefer unobstructed and uninsulated contact with the game.

In the opinion of the appeals court, "it is a matter of 'universal common knowledge' that a flying baseball is capable of inflicting painful, sometimes serious and even fatal, injury and may fly in any direction and strike any bystander not on the alert to evade it." Despite such risks, the court found "[b]aseball patrons generally want to be involved with the game in an intimate way and are even hoping that they will come in contact with some projectile from the field (in the form of a souvenir baseball).

[S]pectators know about the risk of being in the stands and, in fact, welcome that risk to a certain extent. Most spectators prefer to be as "close to the play" as possible, without an insulating and obstructive screen between them and the action....The chance to apprehend a misdirected baseball is as much a part of the game as the seventh-inning stretch or peanuts and Cracker Jack.

According to the court, this "majority rule" ensures that "those spectators desiring protection from foul balls will be accommodated and that seats in the most dangerous area of the stadium will be safe." In so doing, the appeals court acknowledged the Baseball Rule also recognizes "baseball tradition and spectator preference by not requiring owners to screen the entire stadium." In balancing these interests, the appeals court rejected the notion that "the Baseball Rule's time has come and passed."

It would be unfair to hold owners and operators liable for injuries to spectators in the stands when the potential danger of fly balls is an inherent, expected and even desired part of the baseball fan's experience. Moreover, owners and operators would face undue hardship if forced to guarantee protection for all fans in the stands from every fly ball.

Spectator in Aisle

Despite the Baseball Rule, Martinez had argued that the Astros should still be liable because her attention was diverted and she was required to turn her back to the playing field when complying with the prohibition against baby strollers in the seats. As a result, Martinez claimed the Astros should not be allowed to "hide behind a rule of limited duty that imposes an unyielding obligation upon the spectator to pay attention at all times at the same time the Astros distract the spectator." Accordingly, the issue before the court was "whether a stadium owner should protect a spectator from the risk of injury from a fly ball while walking in an aisle." In the opinion of the court, absent any extraordinary circumstance, the Baseball Rule would apply equally "when the spectator is in the aisle and moving to or from his seat."

If the plaintiff is chargeable with knowledge of the risk of injury from a batted ball while he is in his unprotected seat, there would seem to be no logical basis for considering that he may reasonably be less aware of the same danger in the aisle by which he approaches his seat.

Under the circumstances of this particular case, the appeals court found no evidence that "the Astros or an Astros agent distracted her at the time that the ball struck her." On the contrary, in complying with the usher's request to store the stroller, the court noted Martinez was simply "walking up the aisle." In so doing, the court found the Astros had not increased the inherent risks to which spectators at baseball games are regularly exposed, i.e., being struck by a ball hit into unprotected stands. As a result, the appeals court concluded the Baseball Rule applied to the facts of this case.

Accordingly, in the opinion of the appeals court, the Astros had "complied with its limited duty to provide an adequate number of screened seats." Moreover, the court found the Astros had not created a distraction that had increased the open and obvious risk of being struck by a batted ball entering the stands. The appeals, therefore, affirmed the summary judgment of the trial court in favor of the defendant.

Minority Rule

In the case of *Rountree v. Boise Baseball, LLC*, 2013 Ida. LEXIS 55 (Idaho 2/22/2013), plaintiff Bud Rountree lost an eye after being struck by a foul ball while attending a Boise Hawks game at Memorial Stadium in Garden City. At the time of the incident, Rountree was eating in the Executive Club, an area at the very end of the third base line. The Club was one of the only areas in the whole stadium not covered by vertical netting. Rountree had been talking to someone and had stopped paying attention to the game when he heard the roar of the crowd. Rountree turned his head back to the game and was struck by a foul ball.

The entrance to the Executive Club had no warnings regarding the dangers of being struck by foul balls. Rountree claims he never read the back of his ticket prior to the injury, which contained the following language: "THE HOLDER ASSUMES ALL RISK AND DANGERS INCIDENTAL TO THE GAME OF BASEBALL INCLUDING SPECIFICALLY (BUT NOT EXCLUSIVELY) THE DANGER OF BEING INJURED BY THROWN OR BATTED BALLS."

Rountree brought suit against a number of defendants, including Boise Baseball, alleging their negligence caused the loss of his eye. In response, Boise Baseball asked the district (i.e., trial) court to adopt the "Baseball Rule" which "limits the duty of stadium operators to spectators hit by foul balls." In so doing, Boise Baseball claimed it had complied with the Baseball Rule and was, therefore, entitled to summary judgment dismissing Rountree's lawsuit.

The district court acknowledged that "all courts that have examined the issue of foul-ball injuries have come to the conclusion that owners of baseball stadiums owe a limited duty to patrons with respect to the risk of being hit by a foul ball." Moreover, the district court recognized the following "majority rule" that had emerged from the case law on point:

[A]n owner of a baseball stadium has a duty to screen the most dangerous part of the stadium and to provide screened seats to as many spectators as may reasonably be expected to request them on an ordinary occasion.

While noting "the Baseball Rule's benefits," the district court concluded it was "unable to adopt the rule." In so doing, the district court found such "policy decisions must be made by the Legislature, not the courts."

[T]he Legislature knows how to define the scope of duties owed in the case of particular high-risk businesses....[U]ntil the Legislature intervenes, baseball stadium owners will be held to the standard applicable to all business owners — that being a general duty to exercise ordinary care to prevent unreasonable, foreseeable risks of harm to others.

As a result, the district court denied Boise Baseball's motion for summary judgment. Boise Baseball appealed.

On appeal, the issue before the state supreme court was, therefore, whether Idaho should "adopt the 'Baseball Rule' which limits the duty owed by stadium operators to spectators injured by foul balls." Boise Baseball asked the state supreme court to adopt the following "formulation" of the Baseball Rule that exists in the "majority of jurisdictions":

[T]hat owners and operators of baseball stadiums/fields in Idaho are not liable for injuries to spectators caused by foul balls at baseball games so long as (1) there is screening behind the home plate area; and 2) such screening is of a sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game.

In response, Rountree claimed "the Baseball Rule is rapidly being abandoned." In so doing, Rountree argued the Baseball Rule should be limited to spectators in bleachers and not extend to "multi-purpose areas, such as the Executive Club."

As described by the state supreme court, "to establish a cause of action for negligence, a plaintiff must establish" the following:

(1) a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a breach of duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual loss or damage.

In general, the state supreme court noted that "every person in the conduct of his business has a duty to exercise ordinary care to prevent unreasonable, foreseeable risk of harms to others." In so doing, the state supreme court "identified several factors to determine whether a duty arises in a given context":

The foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

Within the context of "owners and possessors of land," the state supreme court found further the applicable legal duty of care would depend on "the status of the person injured on the land — that is, whether he or she is an invitee, licensee or trespasser." As characterized by the court, at the time

of the incident, Rountree would have been considered Boise Baseball's business invitee.

An invitee is one who enters upon the premises of another for a purpose connected with the business conducted on the land, and a landowner owes an invitee the duty to keep the premises in a reasonably safe condition, or to warn of hidden or concealed dangers.

According to the state supreme court, "[t]he precise duty by stadium owners and operators to spectators struck by foul balls" was "a matter of first impression in Idaho." The Idaho high court would, therefore, look to the reasoning of courts in other jurisdictions for guidance to decide this issue. In so doing, the state supreme court acknowledged that "[t]he majority of jurisdictions to consider the issue have limited this duty by adopting some variation of the Baseball Rule."

Though many variations exist, the most common formulation of the Baseball Rule is that stadium owners and operators must provide screened seats for as many spectators as may be reasonably expected to call for them on any ordinary occasion.

While claiming the authority to adopt the Baseball Rule in Idaho, limiting the duty of a business owner, the state supreme court declined to do so. In so doing, the state supreme court found "no compelling public policy requiring us to do so." In the opinion of the court, "[t]he rarity of these incidents weighs against crafting a special rule."

As noted by the state supreme court, over seven seasons, Rountree's accident was "the only time a spectator has suffered a 'major' injury because of a foul ball at Memorial Stadium." Moreover, the court found Boise Baseball had not provided "any broader statistical evidence regarding the prevalence of foul ball injuries in general, and — assuming they were so prevalent — how varying stadium designs might prevent them." Accordingly, with "no history of accidents to look to, and draw from, to sensibly create a rule," in the opinion of the court, "drawing lines as to where a stadium owner's duty begins, where netting should be placed, and so on, becomes guesswork."

In declining to adopt the Baseball Rule, the state supreme court would, therefore, defer to the Idaho Legislature, leaving "policy formulation to the deliberative body that is better positioned to consider the pros and cons of the issue":

These kinds of questions are appropriate for the Legislature because it has the resources for the research, study and proper formulation of broad public policy....This decision is in keeping with those states whose legislatures have seen fit to adopt variations of the Baseball Rule. See, e.g., Ariz. Rev. Stat. Ann. § 12-554; Colo Rev. Stat. Ann. § 13-21-120 (1994); N.J. Stat. Ann. § 2A:53A-43 to 2A:53A-48; 745 Ill. Comp. Stat. Ann. 38/10. Our Legislature can create a similar rule if it chooses. However, no compelling public policy rationale exists for us to do so.

As a result, the Idaho state supreme court affirmed the decision of the district court that had refused to adopt the Baseball Rule. Rountree's lawsuit would, therefore, be allowed to proceed to trial. At trial, a jury would apply general legal principles governing a landowner's liability for negligence to determine whether Boise Baseball was responsible for Rountree's injury.

For similar examples of legal challenges concerning responsibility for injuries sustained due to fly balls, see:

"Spectator Injury Outside the Stands"

"Baseball Spectator Assumes Normal Risk of Foul Ball Injury?"

"Spectators Assume Obvious Risks in Unprotected Areas of Ballfield"

"Adequacy of Spectator Protection in Danger Zone a Jury Issue"

"Baseball Duty to Provide Protective Screening for Spectators."

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